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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/160588

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 06, 2014, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner's FS benefits effective September 1, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pahoua Vang

Ozaukee County Department of Social Services  
121 W. Main Street  
PO Box 994  
Port Washington, WI 53074-0994

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. On July 11, 2014, the Petitioner applied for FS benefits. She reported herself and her minor child in the household. She also reported another adult, [REDACTED] in the household. In addition, Petitioner

reported she was pregnant with [REDACTED] child. She reported that she and [REDACTED] do not purchase food or eat meals together. She reported that she is disabled and receives \$832/month in Social Security disability payments. She also receives Medicare premium assistance. She reported her son receives Social Security of \$351/month. She receives \$170.51/month in child support. She also reported her employment with [REDACTED] of 25 hours/pay period at \$8.20/hour. She reported [REDACTED] employment at [REDACTED] of 39.88 hours/pay period at \$13/hour.

3. On July 14, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her application for FS benefits had been approved for \$10 for July, 2014 and \$15/month effective August 1, 2014. This was based on a household size of two that included the Petitioner and her minor child. The agency budgeted gross monthly household income of \$1,899.16 which includes earned income from the [REDACTED] of \$440.75/month, income from Social Security for the Petitioner and her son, child support and Medicare premium assistance.
4. On August 5, 2014, the Petitioner contacted the agency to report the birth of her baby.
5. On August 12, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end effective September 1, 2014 due to income exceeding the program limit. This determination was based on a household of four including Petitioner, her son, her daughter and [REDACTED]. Gross monthly household income was determined to be \$3,687.70 including [REDACTED] earned income, Petitioner's earned income from the [REDACTED] of \$76/month, Social Security income for the Petitioner and her son, child support and premium assistance.
6. On September 17, 2014, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of [REDACTED] employment and income as well as verification of Petitioner's medical expenses. The due date for the requested verifications was September 26, 2014.
7. On September 26, 2014, the agency received a verification from [REDACTED] employer stating that he works 40 hours/week at \$13.00/hour.
8. On September 29, 2014, the agency issued a Notice of Decision to the Petitioner denying FS benefits effective September 1, 2014 due to income exceeding the program limit. This was based on a household size of four and gross monthly household income of \$3,694.41 including [REDACTED] earned income, Petitioner's earned income, Petitioner's and her son's Social Security income, child support and premium assistance.
9. [REDACTED] pays monthly child support of \$323.08. Petitioner's monthly rent expense is \$475.00. Petitioner submitted monthly medical expenses of \$104.90.
10. On September 2, 2014, [REDACTED] contacted the agency to request that three other dependents be considered as part of the household for purposes of FS benefits. [REDACTED] stated that he has joint custody of the three children. The children have been included in their mother's FS group for approximately 6 years.

### **DISCUSSION**

A food unit, for purposes of determining FS eligibility, is defined as one or more persons who live in the same household and purchase and prepare food together for home consumption. FoodShare Handbook (FSH), § 3.3.1.1.

Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. The FSH describes the method for determining which household a child resides in when there is a joint custody arrangement:

If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50

custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

If the parents cannot or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:

1. If the parents reside in different school districts, where does the child attend school? Who selected the school?
2. Who assists the child with homework or school-related tasks?
3. Are there tuition costs for the child's education? If so, who pays those costs?
4. If the child is enrolled in day care, who arranges for and pays these costs?
5. Who is responsible for taking the child to and from school and/or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care provider?
7. Who arranges medical and dental care for the child? Who selects the physician and dentist?
8. Who maintains the child's medical records?
9. Who initiates decisions regarding the child's future?
10. Who responds to medical or law enforcement emergencies involving the child?
11. Who spends money on food or clothing for the child when the child visits the absent parent?
12. Who disciplines the child?
13. Who plays with the child and arranges for entertainment?
14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FS for a child. If you still cannot determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision . . .

#### FSH § 3.2.1.1.

In this case, the children of [REDACTED] have been on their mother's FS case for approximately 6 years. [REDACTED] testified that he has joint custody of the children. A copy of the court order was not provided at the hearing so I do not know if a primary caretaker was designated and I cannot verify the amount of time that [REDACTED] has the children. I also do not know if the court order specified which parent may apply for FS benefits for the children.

If the Petitioner and ■ wish to have the children added to their FS group, they need to provide information such as that specified above to the agency to show that they exercise more control or have more physical placement of the children than their mother. Without more evidence, neither the agency nor I can determine that the children should be in the Petitioner's FS group. Therefore, because the children's mother applied for FS benefits first, the children properly remain on their mother's FS case unless or until the Petitioner and ■ provide information to show that the children should be moved to their FS case.

I have reviewed the agency determination to deny the Petitioner FS benefits based on income exceeding the program limit. Individuals are eligible to receive FoodShare benefits provided they meet financial eligibility requirements. FoodShare Wisconsin Handbook (FSH), §1.1.3. A threshold financial eligibility requirement is the gross income test. The gross income limit for most households is 200% of the Federal Poverty Level (FPL). Id., 4.2.1.1. The 200% FPL amount for a group of four is \$3,926.00. Id., §8.1.1. For other households, the gross income limit is a much lower multiple of the FPL - 130% or 165%. Id. Income must be converted to a monthly amount. 7 Code of Federal Regulations, §273.10(c)2(i).

Once a household has passed the gross income limit that household moves on to the net income test and allotment calculation.

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income, including earned and unearned income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$163 per month for a four-person household. 7 C.F.R. §273.9(d)(1); FoodShare Handbook (FSH), § 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 4.6.6. Another deduction is for shelter expenses in excess of 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FSH, § 4.6.7. A final deduction is allowed for child support payments.

In this case, the Petitioner's gross monthly income of \$3,687.70 was under the gross income limit of \$3,926. The agency then applied the net income test to determine the amount of FS to which the Petitioner is entitled. The agency applied a standard deduction of \$163, an earned income deduction of \$445.85, excess medical expense deduction of \$69.90, and child support payment deduction of \$323.08. The agency did not apply a shelter deduction because the Petitioner's shelter and utility costs do not exceed 50% of adjusted income. The Petitioner's net adjusted income is \$2,685.87. The net income limit for a household of four is \$1,963. The Petitioner's net income exceeds the program limit. Therefore, the agency properly denied FS benefits.

### **CONCLUSIONS OF LAW**

The agency properly denied FS benefits to the Petitioner.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

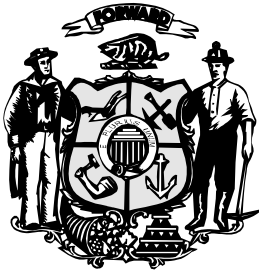
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 5th day of December, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 5, 2014.

Ozaukee County Department of Social Services  
Division of Health Care Access and Accountability